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IN THE

Supreme Court of the United States

October Term, 1940.

No. [redacted] 38

WILLIAM S. LOVELL AND DOUGLAS GORDON LOVELL,

Petitioners,

Versus

DULAC CYPRESS COMPANY, LTD. AND J. M. BURGUIERES COMPANY, LTD.,

Respondents.

PETITION OF WILLIAM S. LOVELL AND DOUGLAS GORDON LOVELL FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

and

BRIEF AND ARGUMENT IN SUPPORT THEREOF.

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ROBERT GILES,
Of Birmingham, Ala.
Of Counsel.

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TO THE HONORABLE THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioners respectfully pray issuance of a Writ of Certiorari to review the judgment of the Cicruit Court of

Appeals for the Fifth Circuit entered January 14, 1941 (R. 114) affirming a judgment of the United States District Court for the Eastern District of Louisiana (R. 79). Rehearing was denied by the Circuit Court of Appeals on February 12, 1941 (R. 140).

The opinion of the United States Circuit Court of Appeals above referred to has not as yet been reported.

STATEMENT OF MATTER INVOLVED.

Petitioners (citizens of Alabama and Maryland, respectively) sued respondents (citizens of Louisiana) in the Federal District Court of Louisiana for title to certain Louisiana lands, and for Twenty-four thousand ($24,000.00) Dollars as damages for timber cut therefrom by respondents. (R. 2-10). Federal jurisdiction was based upon the diversity of citizenship.

Plaintiffs claimed title under the tax redemption statutes of Louisiana (Act 41, La. Acts 1912, amending Sec. 62 of La. Act 170 of 1898; also Act 237, La. Acts of 1924) having redeemed the lands in question in 1938 (R. 11) from an 1895 adjudication or sale of the same to the State for nonpayment of taxes by plaintiffs' ancestors (R. 63). The claim for damages was based upon the defendants having trespassed upon and removed from the land large quantities of valuable timber during the *interim* between the aforesaid adjudication and redemption and while the title to the lands reposed in the State, subject, however, to the plaintiffs' right of redemption (R.

44, 68). The defendants interposed several defenses as to the claim for title (R. 13-21, 34-38), but the rulings of both the District Court and the Circuit Court of Appeals were favorable to petitioners in that regard, and are not sought to be reviewed here. Suffice it to say that petitioners were held to be the owners of the land by virtue of the redemption (R. 76). The principal defense to the action for damages was that the redemption was not retroactive as to the trespass, and that since the trespass and taking occurred while title to the land was in the State, plaintiffs were without right of action therefor.

The case was submitted to the District Court upon an agreed statement of facts (R. 44, 62) and although there was judgment for the plaintiffs for the title, it was against them as to damages (R. 79), which judgment was in all respects affirmed by the Circuit Court of Appeals, upon appeal and cross-appeal taken by petitioners and respondents, respectively.

In deciding the claim for damages adversely to petitioners, the Circuit Court of Appeals held that:

> "The owner then in retaking the property, except for subrogation to the State's liens for the taxes of 1894, retook it not as it was in 1895, but as it was in 1938 * * *"[1]

In so holding, the Circuit Court of Appeals not only failed to follow but diametrically opposed the pronouncement of the Court of Appeal of Louisiana (which is an intermediate state appellate court) in the case of *Johnson*

[1] All typographical emphasis throughout the petition and brief is supplied.

vs. Chapman, (La. App.) 179 So. 466, wherein that Court ruled:

> "The State having allowed plaintiff to redeem the property to which it held indefeasible title, *thereby restored the same to the owners as of the date of the sale, or their transferees.*"

Moreover, the holding of the Circuit Court of Appeals squarely conflicts with the only case considering this precise question of a redemptioner's recovery for *ad interim* trespass. *Elk Garden vs. Gerstell*, 95 W. Va. 471, 121 S. E. 569, 33 A. L. R. 298.

JURISDICTIONAL STATEMENT.

The jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1935 (U. S. C. A. Title 28, Section 347), and under the decision of this Court in *Forsythe vs. Hammond*, 166 U. S. 506, 41 L. ed. 1095, and *Stoner vs. New York Life Insurance Company* (present term) .... U. S. ...., 85 L. ed. 275. This petition is presented within the time allowed by law, the judgment of the Circuit Court of Appeals having been entered on January 14, 1941, (R. 114) and a petition for rehearing having been filed within the delays allowed by law and having been denied on February 12, 1941 (R. 140).

QUESTIONS PRESENTED.

The foregoing presents the following questions for the consideration of this Court:

1. Whether the United States Circuit Court of Appeals must follow the decision of an intermediate state appellate court, upon a question of local law, in the absence of convincing evidence that the highest Court of the State would decide differently, where the intermediate decision has been first affirmed by the highest Court, and then the judgment later reversed solely because of a new finding as to a controlling fact.

2. Whether petitioners, under the law in general and that of Louisiana in particular, are entitled after redemption to reinbursement from respondents for having cut and sold standing timber from lands during the *interim* that title thereto was vested in the State by tax adjudication.

REASONS FOR ALLOWANCE OF CERTIORARI.

1. The Court of Appeals erred in deciding an important question of local law in a way conflicting with an applicable local decision.

2. The Court of Appeals erred in failing to recognize and apply the general and fundamental rules of law respecting redemption of property, and in holding that a tax redemptioner becomes the owner as of the date of the

redemption rather than as of the date of the tax sale, so as to preclude the redemptioner from the recovery of damages for trespass to the property while the title thereto was vested in the State, contrary to the only precedent exactly in point, it being important that such question be authoritatively settled in view of the volume of tax title litigation.

Wherefore, The premises considered, petitioners respectfully pray that the Writ of Certiorari issue to the Circuit Court of Appeals for the Fifth Circuit to revise its judgment aforesaid, and in that behalf respectfully submit the following brief and argument.

Respectfully Submitted,

JAMES Q. SMITH,
Attorney for Petitioners.
DAVID GERTLER and
ROBERT GILES,
Of Counsel.

BRIEF AND ARGUMENT.

I. Opinions Below.

The decision at first instance was that of District Judge Wayne G. Borah, filed February 29, 1940. It appears at page 79 of the record. The opinion of the Circuit Court of Appeals was written by Circuit Judge Hutcheson, with the concurrence of Judge McCord, and with Judge Sibley dissenting. It was filed January 14, 1941, has not as yet been reported and appears at page 114 of the record.

II. Jurisdiction.

The Court is respectfully referred to the jurisdictional statement at page 4 of the petition as to the basis for jurisdiction and timeliness of presentation.

III. Facts.

The facts are likewise summarized at page 2 of the petition. It will be noted that, by stipulation, the cause was submitted at first instance upon the questions of title and damages, "with the understanding that if the Court holds in favor of the plaintiffs that they have title to the land, and also have an action for trespassing as alleged in plaintiffs' petition, that thereafter the Court will pass upon the question of quantum of damages". (R. 44) Plaintiffs' title was recognized (R. 79) but their demand for damages rejected (R. 79, 77). The verified petition avers the value of the timber cut as being $24,000.00 (R. 7). The details of the claim for damages are not ex-

emplified by the record, not having been gone into pursuant to the stipulated submission. We respectfully emphasize that the sole reason for the rejection of the claim for damages was that "Since the State had absolute title to the property before plaintiffs exercised their right of redemption, the plaintiffs cannot recover damages for the timber removed during the period in which ownership was in the state." (R. 77). It is the affirmance of this ruling by the Court of Appeals, holding that plaintiffs retook the property "not as it was in 1895, but as it was in 1938", which we contend to be erroneous because of its conflict with the rule in the *Chapman* case, *supra*, and with the general jurisprudence on the subject.

ARGUMENT.

Summarization.

Federal Courts are bound to follow local decisions as to the effect of tax redemption. The Louisiana courts have held that such effect is the restoration of the property as of the date of the sale. Subsequent reversal of the judgment following this opinion because of a new finding of a single controlling fact leaves the principle of retrospection intact and binding on the Federal Court. The decision of the Circuit Court denying plaintiffs' damages conflicts with this principle of retrospection obtaining in Louisiana, and with the only decided case squarely in point upon *interim* trespass which premised recovery upon such principle. This conflict calls for authoritative settlement by this court.

Federal Courts are Bound to Follow Local Decisions as to the Effect of Tax Redemption of Land.

This petition presents for decision the single question of whether or not redemption from a tax sale of lands so relates back and vests in the redemptioner a retrospective title which would enable him to sue for a devastation of his property committed while title was in the State prior to redemption. *Ad valorem* systems of realty taxation being purely statutory and varying greatly among the different states, the question is obviously one of local law which, when raised in Federal Courts in litigation between citizens of different states, would have been ruled by local decisions even prior to *Erie Railroad vs. Tompkins*, 304 U. S. 64; 82 L. ed. 1188.

By several decisions at the present term, this Court has thoroughly established the law to be that "in cases where jurisdiction rests on diversity of citizenship, Federal Courts must follow the decisions of intermediate State courts in the absence of convincing evidence that the highest court of the state would decide differently."

Stoner vs. New York Life Insurance Company ..... *U. S.* .....; *85 L. ed. 275.*
West vs. American Tel. & Tel. Company ..... *U. S.* .....; *85 L. ed. 146.*
Fidelity Union Trust Company vs. Field ..... *U. S.* .....; *85 L. ed. 176.*
Six Cos. of Cal. vs. Joint Highway Dist. ..... *U. S.* .....; *85 L. ed. 159.*

(These cases are found in the L. ed. advance sheets, being Nos. 74, 44, 45, 32, and 267, respectively, at the present term.)

Therefore, if the Court of Appeal of Louisiana has decided that a redemption unqualifiedly restores the property to its owner as of the date of the sale, then the Circuit Court of Appeals was in error in holding that petitioner retook his property "not as it was in 1895, but as it was in 1938", and the conflict bespeaks allowance of certiorari by this Court.

In Louisiana, Redemption Restores the Property to the Owner as of the Date of the Tax Sale.

If this is a true principle, petitioners have a right to the damages claimed, as is further argued *infra*. And that such is the law of Louisiana has been declared by the Court of Appeal of that State.

In the case of *Johnson vs. Chapman, et al.*, (La. App.) 179 So. 466, decided in 1937, the land in question was adjudicated and sold to the state in 1922 for unpaid 1921 taxes. In 1928 and 1929, one Hamner purchased the land in successive tax sales by the State for the tax years 1927 and 1928, respectively. The plaintiff, Johnson, purchased an interest in the land from one of the co-owners in 1930, and then about 1934 he paid the 1921 taxes and redeemed from the sale therefor. Plaintiff sued J. D. Chapman (the other co-owner with plaintiff's grantor) and Hamner for title and possession, contending the tax sales to Hamner were void because of the fact that when

they were made (1927-1929) title was already in the State under the 1921 sale, from which sale he, the plaintiff, had redeemed.

The Court of Appeals, with reference to plaintiff's (Johnson's) redemption in 1934 for 1921 taxes, said:

> "The State having allowed plaintiff to redeem the property to which it held indefeasible title, *thereby restored same to the owners as of the date of the sale, or their transferees.*"

Thus it was squarely held that plaintiff (though actually redeeming after Hamner's deed) acquired the property as of 1922, (the date of tax sale, and prior to Hamner's deeds). Accordingly, petitioners' redemption restores their property as of 1895 rather than 1938. The holding of the Circuit Court of Appeals diametrically opposes this ruling.

In the *Johnson* case, *supra*, there was a review of the above decision of the intermediate appellate court by the Louisiana Supreme Court, on certiorari. On original submission, the above holding in favor of the plaintiff, *Johnson*, was affirmed, *Johnson vs. Chapman, et al.*, 190 La. 1034; 183 So. 289. However, upon rehearing and re-examination of the record, (190 La. 1034, 183 So. 289, 290) the Louisiana Supreme Court found that the 1921 taxes had in fact been paid when due by one H. G. Chapman, and therefore there had been no valid adjudication and sale to the State for non-payment of those taxes, and therefore the plaintiff, Johnson, could obtain no benefit from an attempted redemption from such void sale.

This left the adjudications for 1927-1929, under which Hamner claimed, valid, and accordingly the finding of the Court of Appeals against Hamner was reversed.[1]

This rehearing, based as it is upon a new finding of ultimate fact, would not affect the *legal principle* of retrospective operation of redemption laid down as above. It is well settled that:

> "The overruling of a decision as to one proposition of law, declared by it, does not argue unsoundness therein as to other and distinct propositions enunciated thereby."
>
> *21 C. J. S. 326, Par. 194* (citing cases).

Even less would a different finding of fact affect an announced legal principle.

It is true that the facts in the *Johnson* case are not identical with or even similar to those here involved. But the principle of restoration, of retrospective operation of redemptive title, is exactly the same, and is equally as determinative of the rights of the parties. This notion of retroactive operation and restoration of the *status quo ante* is the very essence of the redemption process, the element which distinguishes it from ordinary purchase and sale.

---

[1] The Supreme Court said, "The tax deeds to Hamner are attacked by the plaintiff only on the grounds that the State was vested with title at the date of the assessments.

"The Court of Appeal, Second Circuit, held that the tax sales made to Hamner were void and ordered them cancelled from the records, and, on original hearing, we affirmed that judgment.

"So far as the State having title in 1927 and 1928, when the property was assessed to H. G. Chapman and sold to W. L. Hamner, a review of the record conclusively shows that it had none.

"The District Court rendered judgment in favor of the defendants because the trial Judge found that, although the property had been adjudicated to the State in the name of D. Chapman for the unpaid taxes of 1921, the taxes had previously been paid for that year by H. G. Chapman."

The Circuit Court of Appeals recognized it solely for the purpose of subrogation of the redemptioner to the tax lien for 1894, according to the terms of the certificate of redemption. No mention was made of the *Johnson* case.

Neither the District nor Circuit Court cited a decision squarely in point in support of its holding. The Louisiana courts have never passed upon the question of retroactive redemption as warranting recovery for *interim* trespass. But the pronouncement of the Court in the *Johnson* case harmonizes with the general jurisprudence involved in the question, and this, especially in view of the fact that there is no decision denying such recovery (that counsel have been able to discover) is most persuasive to the point that, were the question presented to the Supreme Court of Louisiana, it would be ruled consistently with petitioner's contention.

The General Law is that a Redemptioner may Recover for Interim Trespass, Because of his Retrospective Title.

This is the necessary result implied by the inherent retrospective operation of the redemptive process. General authorities are consonant with the rule of the *Johnson* case.

Redemption has been defined as a defeasance of the tax sale with the owner's "revesting in himself a title as complete and unqualified as he had before the tax was assessed—".

26 R. C. L. 384, par. 427.

The Georgia court holds that "the redemption contemplated by the law was a restoration of the status existing before the sale—".

Elrod vs. Owensboro Wagon Co. 128 Ga. 361, 57 S. E. 712.

The only reported decision dealing with this question of *interim* trespass is the case of *Elk Garden Big Vein Coal Mining Company vs. Gerstell*, 95 W. Va. 471, 121 S. E. 569, 33 A. L. R. 298, wherein the Supreme Court of West Virginia in 1924 considered the precise question here presented and ruled it in favor of recovery. The question was recognized and treated as one of novel impression, and a unanimous court delivered a well-considered opinion which is accurately epitomized in the syllabus:

> "Where the title to a tract of coal owned by a corporation is forfeited to the State for the failure of the owner to have the same charged on the land books of the county wherein the coal lies for five successive years, and the former owner redeems the same, as provided by the statute, it becomes reinvested with its former title, said title is retrospective in character, and the corporation may maintain an action of trespass for the wrongful removal of said coal, though the trespass was committed while the title to said coal was vested in the State."

The Court said:

> "The most difficult question which arises in this case is the question raised on the objection to the filing of the special plea by the defendant, which plea sets up, as a defense, the fact that, at the time the alleged trespass complained of in the declaration

was committed, as therein alleged, the plaintiff was neither the owner of the said vein of coal, nor was it in possession of the same; that at the time the title to the said vein of coal was in the State of West Virginia, having been forfeited for non-entry on the land books of Mineral County; that the plaintiff failed to have the said vein of coal charged on the land books of said county from the year 1898 to the year 1922, and that by reason of non-entry the title to said Big Vein of coal was forfeited to, and became vested in, the State in 1903. We fail to find any decisions, either by this Court or the courts of other states, having similar statutes and holdings, which bear directly upon this question.

"As a general rule, the plaintiff, to maintain an action of trespass to real property, must be either in actual or constructive possession of the property trespassed upon at the time the trespass is committed, *Gillison vs. Charleston*, 16 W. Va. 282, 37 Am. Rep. 763. The common-law rule is that the plaintiff must be in actual possession of the property at the time of trespass, but the modern authorities hold the rule as above stated. 'The plaintiff must possess the real estate at the time when the alleged injury occurred, as a rule, in order that he may maintain an action of trespass therefor. However, if he acquires the title after the injury, and the title is retrospective in character, dating back prior to the time of the injury, he may maintain his action.' 26 R. C. L. p. 958, par. 35.

"The title to this vein of coal was forfeited to the State in the year 1903, under Par. 29, chapter 31, of the Code, and the title to the same from that time until it was redeemed by the former owner, was vested in the State. The State held the title for what purpose? . . . The whole policy of the law,

including its many changes, seems to be that the State holds the title to the land, forfeited to it for any cause, solely for the payment of the taxes charged and chargeable thereon, and we may well say, as it is held by a long line of cases decided by this Court, that the former owner has no title to land forfeited to the State while the forfeiture exists, and before its redemption under the law, but that the title is held by it for the sole purpose of the payment of the taxes thereon; and when the title of the State is reinvested in the former owner by redemption thereof we are of the opinion and so hold, that the effect of said redemption and reinvestment is to transfer and assign to the former owner the right to institute any action for trespass on the land, the cause for which arose at any time during the forfeiture. That statute, which grants to the former owner the title vested in him before the forfeiture, makes his title retrospective in its nature, and entitles him to bring an action of trespass for acts committed while his title was vested in the state.

"Our statutes creating forfeiture of land to the State for any cause, and prescribing the proceedings by which it could or may collect the taxes thereon, have at all times recognized and granted to the former owner the privilege to redeem his land by filing a petition setting up his title and showing his right to redeem it. Acts 1872-73, Chap. 134; Acts 1882, Chap. 95, Par. 14; Acts 1885, Chap. 46; Acts 1887 Chap. 17; Acts 1891, Chap. 94; Acts 1893, Chap. 24 (Barne's Code 1923, Chap. 105, Par. 17). There has been no change in the statute by which the title passed to the State . . . .

"That the title to this coal was forfeited to the State for non-entry on the land books of Mineral County, and that the former owner, during the time

the title was so vested in the State, could not maintain an action of trespass for the taking and removal of the same, seems to be unquestioned. State vs. Central Pocahontas Coal Co., 82 W. Va. 230, 98 S. E. 214. This Court, in passing upon the effect of this statute in many cases, so holds. In the case of McClure vs. Maitland, 24 W. Va. 561, the court holds that 'The former owner, having no interest in the land or proceedings for its sale, is not entitled to be a party to the proceedings.'

"It seems to have been the purpose and intent of the legislature, viewed through all its acts and amendments, that when the former owner redeems his land he is entitled to receive not only his former title but the land itself as it was immediately before the title became vested in the State, and that he is reinvested not only with the same title he had before the forfeiture, but the right to institute an action of trespass, the cause of which arose while the title to the land was vested in the State, and the benefit of the constructive possession of the State at the time the trespass was committed is transferred to the former owner upon the redemption of his land and the reinvestment of his title. We, therefore, hold that the lower Court did not err in refusing to allow defendant's special plea setting up the forfeiture of this coal to be filed."

The Circuit Court sought to distinguish this decision from the instant case in that in West Virginia the State did not have full title, whereas "The rule controlling here (Louisiana) where the state after the expiration of a year has full title until redemption has occurred, is the same as that prevailing where property has been sold after the commission of a trespass thereon." (From Judge Hutcheson's opinion, citing a case of ordinary purchase.)

But that title *does* vest absolutely in West Virginia, even as in Louisiana, is apparent from *Early vs. Berry*, 115 W. Va. 105, 175 S. E. 331, (1934) wherein the Supreme Court of Appeals said:

> "It is quite true that this Court has held in several different cases that the sale to the State * * * *vests title to the land altogether and absolutely in the State.* * * * The right to redeem is a substantial equity, and a property right that exists as long as legal title remains in the State * * *. *The title of the redemptioner is retrospective in character and vests him with the right to sue for trespass occurring during the time of forfeiture.*" (Citing the Gerstell case).

It is respectfully submitted that this distinction by the Circuit Court is untenable, that in both West Virginia and Louisiana the State had full title subject to the right of redemption, and that to hold the same rule applicable to both redemption and sale is squarely conflicting with the *Johnson* case which must control here, and which clearly says that redemption relates back and restores the property as of the date of the sale, and that this is the same principle which impelled the West Virginia Court to its conclusion in the *Gerstell* case.

CONCLUSION.

It is respectfully urged that the great volume of tax-title litigation, frequently involving large sums, as here, makes of this an important question, and that the probable conflict between the opinion below and a local authority,

and the apparent conflict between that opinion and the only other case in which the precise question has been considered, makes a proper instance for the allowance of certiorari to the end that the matter may be thoroughly reviewed and authoritatively determined here.

Respectfully Submitted,

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WILLIAM S. LOVELL AND DOUGLAS GORDON LOVELL,

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Respondents and Cross-Petitioners.

CROSS-PETITION OF DULAC CYPRESS COMPANY, LTD., AND OF J. M. BURGUIERES COMPANY, LTD., FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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DULAC CYPRESS COMPANY, LTD., AND J. M. BURGUIERES COMPANY, LTD.,

Respondents and Cross-Petitioners.

CROSS-PETITION OF DULAC CYPRESS COMPANY, LTD., AND OF J. M. BURGUIERES COMPANY, LTD., FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

Your cross-petitioners, Dulac Cypress Company, Ltd., and J. M. Burguieres Company, Ltd., respectfully show:

I.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

An action was instituted by petitioners and cross-respondents, William S. Lovell and Douglas Gordon Lovell

(hereinafter referred to as "plaintiffs" for purposes of brevity), against respondents and cross-petitioners, Dulac Cypress Company, Ltd., and J. M. Burguieres Company, Ltd. (hereinafter referred to as "defendants" for purposes of brevity) in the United States District Court for the Eastern District of Louisiana (R. 1). The relief sought by the plaintiffs was two-fold: first, the recognition of their title to certain lands located in the Parish of Terrebonne, State of Louisiana; and second, damages in the amount of $24,000.00 for certain timber alleged to have been removed from said land by defendants. (R. 8, 9.) The jurisdiction of the Federal Courts was founded upon diversity of citizenship (R. 2, 3) and the requisite amount in controversy. (R. 8, 9.) The District Court denied plaintiffs' claim for damages (R. 79) and was sustained by the Circuit Court of Appeals for the Fifth Circuit (R. 126); hence the ruling on the question of damages is not sought to be reviewed by defendants. However, in regard to the question of title, the District Court (R. 79) rendered judgment in favor of plaintiffs which judgment was affirmed by the Circuit Court of Appeals. (R. 126.) It is to the affirmance of this ruling that defendants address themselves.

The plaintiffs' title is founded upon a tax sale to W. S. Lovell (their ancestor in title) made on April 30th, 1883, in the name of Quitman (R. 2-9). On June 8th, 1895, however, the property in question was adjudicated to the State of Louisiana for the taxes of 1894 (R. 63).

By Act 97 of 1890 the Atchafalaya Basin Levee District was created and all lands thereafter transferred to the

State at tax sales were donated to said Board (R. 63). That statute provided that, as to lands thereafter adjudicated to the State, within one year subsequent thereto the Auditor and Register of the State should, upon request, execute "proper instruments of conveyance" to the Board, which should be recorded in the parish wherein the property was situated and the title and possession would thereupon vest in the Board (R. 63, 82). A record in the State Auditor's office, who, at the time of said adjudication, had jurisdiction over tax lands (R. 63), bears a notation opposite the description of the Lovell lands "Atchafalaya Basin Levee District Fund" (R. 64, 71). According to the undisputed testimony in the case, this notation was considered by the proper State employees to mean that the lands therein described had been transferred to the Atchafalaya Basin Levee District (R. 64, 71).

On February 14th, 1912, the Register of the State Land Office (to whom at that time jurisdiction over tax lands had been transferred) executed an instrument dated February 14th, 1912, wherein he declared that he did "hereby certify that the records of the State Land Office show that the following described lands, which were sold to the State of Louisiana for the years enumerated, or assessments in the names of the parties stated, have been transferred to the Atchafalaya Basin Levee Board" under the Levee Board Act, said instrument describing the lands here in question (R. 72-73).

The Levee Board transferred said lands to defendants' ancestor in title (R. 21-22, 72) who in turn, transferred them to the defendants. (R. 66.) Defendants and their

ancestor in title have continued in the actual, physical possession of this property since 1903 or 1904 (R. 73).

On January 12th, 1938, plaintiffs, as the heirs of W. S. Lovell, redeemed the property from tax sale by paying all taxes not theretofore paid on the property and a certificate of redemption was issued and placed of record (R. 74). Plaintiffs then filed this proceeding basing their title upon the said tax sale to Lovell in 1883, and the redemption executed by the Register of the State Land Office on January 12th, 1938.

Defendants admitted the tax sale of 1895 and the execution of the certificate of redemption in 1938, but asserted that said redemption was illegal, null, void and of no effect in that the State had donated this property to the Board of Commissioners of the Atchafalaya Basin Levee District by Act 97 of 1890, and that the instrument of February 14, 1912, executed by the Register, had the effect of transferring the lands to the Levee Board (R. 35); and in connection with this instrument pleaded Act 316 of 1926 of the Louisiana Legislature, which confirmed conveyances signed by either the Auditor or the Register (R. 37); or, in the alternative, alleged that if it did not, then that a conveyance had been executed by the Register and the Auditor which had been lost (R. 35-36). Defendants further averred that they and their immediate ancestors in title had held possession for more than thirty years and pleaded prescription of ten and thirty years *acquirendi causa* provided for by the laws of Louisiana (R. 20-21). The defendants also pleaded the prescription of six years provided for by Louisiana Act 62 of 1912,

which they contended barred any attack upon the conveyance by the Levee Board to defendants' ancestor in title. (R. 40-41.)

The District Court held that the tax sale in the name of Lovell made on June 8, 1895, vested the State with absolute title to the property (R. 76); that defendants had failed to show that a conveyance to the Levee Board had been made in the manner provided by Act 97 of 1890 (R. 75-76); that Act 237 of 1924 repealed that part of Act 97 of 1890 which authorized the Levee Board to demand the conveyance of title to lands acquired by the State at tax sale (R. 76); that plaintiffs were legally entitled to redeem the lands in 1938 (R. 76); and that in view of the fact that the State held the absolute title to the property prescription of ten and thirty years *acquirendi causa* could not be maintained as prescription did not run against the State (R. 77).

Both plaintiffs and defendants appealed from the judgment of the District Court to the Circuit Court of Appeals for the Fifth Circuit. (R. 106, 107.) The Circuit Court of Appeals affirmed the District Court on all particulars. (R. 126.)

The defendants applied for a rehearing, (R. 127) showing that the Court erred in holding that no transfer had been made by the State to the Levee Board; in holding that the case of *State ex rel. Fitzpatrick v. Grace*, 187 La. 1028, 175 So. 656, was decisive of the question of title in this case; and in failing to sustain the various pleas of prescription. (R. 128.) The defendants also called the

attention of the Court to the fact that a suit entitled *"Wm. S. Lovell et als. v. Andrew Fitzpatrick, et als."*, No. 11,193 of the Docket of the 17th Judicial District Court of Louisiana for the Parish of Terrebonne, was then pending, wherein the plaintiffs in this action were seeking to be recognized as owners of other lands contained in the same tax adjudication as involved in the instant case. (R. 129.) The defendants then showed that a decision in said state court case would decide the issue of title involved in this case and would be followed by the Federal courts, and that under such circumstances no final decree in this cause should be rendered until a final determination of the said state court suit. (R. 129.) The Court of Appeals however refused the rehearing and its judgment became final. (R. 140.) Since that date a decision has been rendered in the said cause No. 11,193 decreeing that the instrument executed by the Register of the State Land Office, dated February 14, 1912, which is the same instrument as the instrument here in question, constituted a proper transfer from the State to the Levee Board, and rejected the plaintiffs' claim of title to the lands.

The plaintiffs have filed a petition for certiorari in this Honorable Court for the purpose of securing a review by the Court on the question of damages. Defendants now file this, their cross-petition, in order to secure a review on the question of title.

II.

JURISDICTIONAL STATEMENT.

The jurisdiction of this Honorable Court is invoked under Section 240 (a) of the Judicial Code, as amended

(Act of March 3, 1891, c. 517, §6, 26 Stat. 828; as re-enacted by Act of March 3, 1911, c. 231, §240, 36 Stat. 1157; as amended by Act of Feb. 13, 1925, c. 229, §1, 43 Stat. 938) U. S. C. tit. 28, §347 (a). This cross-petition is presented within the proper time, the judgment of the Circuit Court of Appeals for the Fifth Circuit having been entered on January 14, 1941 (R. 114) and a petition for rehearing, which was timely filed, having been denied on February 12, 1941. (R. 140.)

III.

QUESTIONS PRESENTED.

The questions presented by this petition are the following:

1. Did the Circuit Court of Appeals for the Fifth Circuit err in holding that the evidence in this cause, and particularly the instrument signed by the Register of the State Land Office, dated February 14, 1912, and the notation on the Auditor's record, "Atchafalaya Basin Levee District Fund", did not evidence a proper conveyance to the Board of Commissioners for the Atchafalaya Basin Levee District from the State of Louisiana, and in not holding that such conveyance inured to the benefit of defendants?

2. Did the Court err in holding that the case of *State ex rel. Fitzpatrick v. Grace*, 187 La. 1028, 175 So. 656, was decisive of the issue of title in this cause and in applying the doctrine of that case to the one at bar?

3. Did the Court err in failing to sustain the pleas of prescription of ten and thirty years *acquirendi causa* filed by defendants in support of their title and in bar of plaintiffs' demand, and in failing to reverse the judgment and decree of the District Court in this respect?

4. Did the Court err in failing to sustain the plea of prescription of six years filed by defendants based on Act 62 of 1912?

5. Did the Court err in entering a final judgment and denying a rehearing in this cause after its attention had been called to the pendency of a state court suit a final decision in which would be binding upon the Federal Courts and would be determinative of the issues involved herein; and, if not, should This Honorable Court postpone any decision hereon, in order to prevent a conflict between the decisions of the State and Federal courts, until a final adjudication has been had in the state court (whether said final adjudication is by judgment on appeal or by permitting the decision of the lower court to become unappealable)?

IV.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. In deciding that prescription does not run against a tax debtor after a tax adjudication to the State and while the property is in the State, it is believed that the Circuit Court of Appeals decided incorrectly a question of great importance affecting a large number of land titles in this State and affecting the public generally.

Reasons for the incorrectness of said decision are stated in the vigorous dissenting opinion of Circuit Judge Sibley, filed herein. (R. 123.)

2. In deciding that this case is governed by the case of *State ex rel. Fitzpatrick v. Grace,* 187 La. 1028, 175 So. 656, it is believed that the Circuit Court of Appeals has incorrectly given that very important case an interpretation which may extend its scope to cases not originally contemplated in said decision, thereby affecting adversely a number of land titles in this State.

3. In deciding that the instrument executed by the Register dated February 14, 1912, and the notation shown on the Auditor's record, does not operate as a valid conveyance to the Levee Board, it is believed that the Circuit Court of Appeals has decided incorrectly a question which may invalidate many land titles in which such items are involved.

4. The decision of the Circuit Court of Appeals is directly in conflict with the decision of the 17th Judicial District Court for the Parish of Terrebonne, State of Louisiana, in regard to the issue of title raised herein. Should plaintiffs in that suit (who are also plaintiffs in this suit) appeal from said judgment of the lower court, the questions at issue here will be passed upon by the Supreme Court of Louisiana, whose final ruling will be binding on the Federal Courts, and which ruling, it is believed will be directly contrary to that of the Court of Appeals herein. On the other hand, should no appeal be taken by the plaintiffs in said state court suit, and should they permit said judgment to become final against them, then it is believed that said state court decision

would be binding on the Federal Courts as being the final and only expression of the state law on the subject. In addition, plaintiffs in this suit, through the accident of federal jurisdiction alone, will be permitted to recover upon a claim in the Federal Court upon which it could not recover in the state court. Accordingly, unless this Court grants certiorari for one of the foregoing reasons, it seems probable that the only way to prevent a conflict between the State and Federal decisions would be for this Court to postpone any decision herein until such time as a final adjudication is had in the state courts.

Wherefore, your respondents and cross-petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and send to this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the above numbered and entitled case, and that the said decree of the said United States Circuit Court of Appeals for the Fifth Circuit may be reversed by this Honorable Court insofar as same decrees title to the property in question to rest in William S. Lovell and Douglas Gordon Lovell and for such other and further relief in the premises, both legal and equitable, as to this Honorable Court may seem meet and just.

ROBERTS C. MILLING,
Attorney for Cross-Petitioners.

HAYWOOD H. HILLYER, JR.,
Of Counsel.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1940.

No. 859.

WILLIAM S. LOVELL AND DOUGLAS GORDON LOVELL,
Petitioners and Cross-Respondents,

versus

DULAC CYPRESS COMPANY, LTD., AND J. M. BURGUIERES COMPANY, LTD.,
Respondents and Cross-Petitioners.

BRIEF IN SUPPORT OF CROSS-PETITION FOR WRIT OF CERTIORARI.

I.

THE OPINIONS OF THE COURTS BELOW.

The opinion of the United States District Court for the Eastern District of Louisiana, which appears at page 79 of the record, was rendered by the Honorable Wayne G. Borah, District Judge on February 29, 1940, ~~and has~~

31 Fed. Supp. 919
~~not been officially reported~~. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit was rendered on January 14, 1941 ~~and has not as yet been officially reported;~~ (117 Fed. (2d)) Circuit Judge Hutcheson was the organ of the court in this opinion, which was concurred in by Circuit Judge McCord and dissented from by Circuit Judge Sibley. This opinion appears at page 114 of the record.

II.

JURISDICTION.

1. The date of the judgment to be reviewed is January 14, 1941. (R. 114.) Upon timely application, a rehearing was denied on February 12, 1941. (R. 140.)

2. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240 (a) of the Judicial Code, as amended (Act of March 3, 1891, c. 517, §6, 26 Stat. 828; as re-enacted by Act of March 3, 1911, c. 231 §240, 36 Stat. 1157; as amended by Act of Feb. 13, 1925, c. 229, §1, 43 Stat. 938) U. S. C. titl. 28, §347 (a).

3. The nature of this case and of the ruling below are such as to bring the case within the statutory provision relied on in that this case is in the United States Circuit Court of Appeals for the Fifth Circuit, and that said court has rendered a final judgment on the merits

herein against defendants (in part) and that defendants are aggrieved and injured thereby.

4. The cases believed to sustain said jurisdiction are as follows:

Forsyth v. Hammond, 166 U. S. 506.
Gay v. Ruff, 292 U. S. 25.

III.

STATEMENT OF THE CASE.

This has already been stated in the preceding petition under "I" (pp. 1-6), which statement, for purposes of brevity, is hereby adopted and made part of this brief.

IV.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals for the Fifth Circuit erred:

1. In holding that the evidence in the cause, and particularly the instrument signed by the Register of the State Land Office, dated February 14, 1912, and the notation on the Auditor's record, "Atchafalaya Basin Levee District Fund", did not evidence a proper conveyance to the Board of Commissioners of the Atchafalaya Basin Levee

District from the State of Louisiana, and in not holding that such conveyance inured to the benefit of defendants.

2. In holding that the case of *State ex rel. Fitzpatrick v. Grace*, 187 La. 1028, 175 So. 656, was decisive of the issue of title in this cause and in applying the doctrine of that case to the one at bar.

3. In failing to sustain the pleas of prescription of ten and thirty years *acquirendi causa* filed by defendants in support of their title and in bar of plaintiffs' demand and in failing to reverse the judgment and decree of the District Court in this respect.

4. In failing to sustain the plea of prescription of six years filed by defendants based on Act 62 of 1912.

5. In entering a final judgment herein and denying a rehearing after its attention had been called to the pendency of the state court suit involving the same issues; however, in case certiorari is not granted herein in due time on account of any of the above errors, then defendants show that this Honorable Court should postpone any decision hereon until a final adjudication has been had in the state court, whether said final adjudication is by judgment on appeal or by permitting the decision of the lower court to become unappealable.

V.

ARGUMENT.

Summary of the Argument.

The instrument executed by the Register, dated February 14, 1912, was sufficient to vest title in the Levee Board, whether the instrument executed by the Register be considered as a conveyance or as a recognitive act; and, in the alternative, the transfer should be conclusively presumed to have been made. The case of *State ex rel. Fitzpatrick v. Grace* is neither determinative of or pertinent to this case, in spite of the fact that the Court of Appeals based its holding thereon. Also, in spite of the decision of the Court of Appeals, it is urged that prescription does run against a tax debtor while his property is in the State. And the prescription of six years under Act 62 of 1912 applies to a transfer by a levee board as well as to patents. Finally, the Court, in the event that certiorari is not granted in due course, should hold this matter under advisement pending a final adjudication in the state court.

POINT I.

The Instrument executed by the Register to the Levee Board was Sufficient to Vest Title in said Board, whether the Instrument of the Register be considered as Sufficient in itself, or whether it be regarded as a Recognitive Act. In the Alternative a Proper Deed is Presumed to have been Executed.

A. The lands here in controversy were embraced within the statutory grant made by the State of Louisiana to

the Board of Commissioners of the Atchafalaya Basin Levee District (Louisiana Act 97 of 1890, Sec. 11-R. 82) by virtue of which the State granted to the Levee Board all of the lands sold to the State at tax sale within the limits of the Board's jurisdiction. Said statute also provided, however, that after a period of redemption had expired it should be "the duty of the Auditor and the Register of the State Land Office on behalf of and in the name of the State, to convey to the said Board of Levee Commissioners *by proper instruments of conveyance* the lands hereby granted or intended to be granted and conveyed to said Board, whenever from time to time said Auditor and said Register of the State Land Office, or either of them, shall be requested to do so by said Board of Levee Commissioners, or by the president thereof, and thereafter said president of said Board shall cause said conveyances to be properly recorded in the recorder's office of the respective parishes wherein said lands are or may be located, and when said conveyances are so recorded the title to said land, with the possession thereof, shall, from thenceforth vest absolutely in said Board of Levee Commissioners, its successors or grantees. . . ." (R. 82.)

A page in one of the record books maintained in the office of the Auditor (who at the time in question had jurisdiction of lands adjudicated to the State for taxes —R. 70) bears a notation stamped after the description of the Lovell lands: "Atchafalaya Basin Levee District Fund." (R. 64.) The undisputed testimony of employees of the Auditor's office and the Land Office was that they had considered this notation to mean that the land opposite

the notation had been transferred to the Levee Board. (R. 90, 91, 99.) On February 14, 1912, the Register (to whom at that time the jurisdiction over tax lands had been transferred—R. 64) executed an instrument, excerpt from which reads as follows (R. 29):

"State of Louisiana,
"Parish of Terrebonne.

"I, Fred J. Grace, Register of the State Land Office, do hereby certify that the records of the State Land Office show that the following described lands which were sold to the State of Louisiana, for the years enumerated on assessment in the names of the parties stated have been transferred to the Atchafalaya Basin District Levee Board, under the provisions of Act No. 97, of the Acts of the General Assembly of 1890; said lands being situated in the parish of Terrebonne, State of Louisiana:

"Lovell, W S tax year 1894,

"1st. A certain tract of land being 23, 24, 25, 26, 27, 28, 29 and 30.

"2nd. Lots 2, 3, 4, of Section 69 and fractional sections 74 T 19 S R 17 E., and containing Fourteen Hundred and three acres. Vol. 5 pg. 49.

"Lovell, W S tax year 1894,

"389 acres of land being the E½ of E½ of Sections 73 and SE¼ of SE¼ of SW¼ of NE¼ of S½ of Section 76 T 19 SR 17 E. Vol. 5 pg. 49.

(The descriptions of other properties are omitted.)

"Given under my hand and Official Seal of Office, at Baton Rouge, La., on this Fourteenth day of February, 1912.

"Signed: Fred J. Grace, Register of the State Land Office."

This instrument was duly recorded in Terrebonne Parish on February 19, 1912. (R. 30.)

It is our contention that said instrument is "a proper instrument of conveyance" under the terms of the statute above quoted, and that it operated to transfer title to the Levee Board. Plaintiffs contend that said instrument is nothing but a certificate; that it contains no words of conveyance but is simply a declaration that the lands "have been transferred". However, the Supreme Court of Louisiana in the case of *Saunders v. Bolden*, 155 La. 136, 98 So. 867, held that a deed reading—

> "This is to certify that I have sold the Judie Lewis place to Abe Bolden, and he has 10 years to pay for same; $50 per year."

—was "a perfect grant and translation of the land". In view of said case, it is submitted that the instrument in this case in which the Register declared that (R. 29) "I do hereby certify that the records of the State Land Office show that the following described lands . . . have been transferred to the . . . Board" is sufficient to evidence the performance by him of the mere ministerial duty of describing and fixing the location and identity of the lands embraced within the grant previously made by the Legislature. See also: *Pierson v. Armstrong*, 1 Iowa 282, 63 Am. Dec. 440.

The recent decision of the District Court of Terrebonne Parish, which is hereinafter more fully discussed under Point 5, holds that said instrument was sufficient to convey, and did convey, title to the Board. *Lovell v.*

Fitzpatrick, No. 11,193, 17th Judicial District Court for the Parish of Terrebonne, State of Louisiana, decided April 8th, 1941. It is, accordingly, submitted that the decision of the Court of Appeals on this question is erroneous, and should be reversed.

B. If the instrument executed by the Register is not considered as a sufficient conveyance under the terms of Section 11 of Louisiana Act 97 of 1890, then, we respectfully submit that said instrument constituted a recognitive act under *Article 2271 of the Louisiana Civil Code of 1870,* which reads as follows:

> "Recognitive acts—Force and effect.—Recognitive acts do not dispense with the exhibition of the primordial title, unless its tenor be there specially set forth.
>
> "Whatever they contain over and above the primordial title, or different from it, is of no effect.
>
> "Nevertheless, if there be several recognitions conformable, supported by possession, one of them being dated thirty years back, the creditor may dispense with the exhibition of the primordial title."

Therefore, as the production of the original title is dispensed with, the recognitive act operates as a written recorded conveyance to the Levee Board sufficient to vest title in it under the statute.

At this point we also wish to call the Court's attention to the fact that the decision of the District Court of Terrebonne Parish, above mentioned, specifically states, after holding said instrument to be a sufficient convey-

ance, that even if the instrument were not considered a sufficient conveyance, it would operate as a valid recognitive act. (Appendix A, p. 30.)

C. In the event that it were to be considered that under no circumstances could the instrument executed by the Register be a valid conveyance to the Board, then it is respectfully submitted that the evidence in this case, together with the rule that all public officers are presumed to have done their duty (*Martin v. Mott*, 12 Wheat. 19; *Wood v. Frickie*, 120 La. 180, 45 So. 96; *Hampton v. Drew*, 145 La. 374, 82 So. 375), shows that a proper conveyance was in fact executed and was lost or mislaid.

Accordingly, in view of the argument under sub-points A, B and C, above, it is submitted that the Court of Appeals was in error in holding that no proper transfer had been made to the Levee Board.

POINT 2.

State ex rel. Fitzpatrick v. Grace is Neither Determinative of or Pertinent to this Case.

The Court of Appeals held that the case of *State ex rel. Fitzpatrick v. Grace*, 187 La. 1028, 175 So. 656, was determinative of the issue of title involved in this case. (R. 118.) In so doing, and in basing its opinion thereon, it is submitted that the court erred, for it clearly appears that the issues involved in that case are not the same as those involved in the instant case, and that that case does not purport to decide said issues. In the *Fitzpatrick* case an attempt was made to force the Register of the State Land Office and the State Auditor, by way of

mandamus, to execute a conveyance to the plaintiff, who held under a chain of title from the Levee Board. The action did not involve the actual question of title to the lands as against the original tax debtor. Accordingly, *by seeking the execution of the statutory transfer from the proper officers,* the plaintiffs in that case cannot have been claiming *that an actual conveyance had been made to the Levee Board* prior to the date of the statute withdrawing the grant to the Levee Board, for if any such conveyance had been made prior to said date *it would not have been necessary to seek to compel the execution of such a conveyance.* Furthermore, in speaking of the question of impairment of vested rights, the court in the *Fitzpatrick* case (at page 1050) expressly excepted from its remarks in regard thereto any lands which were sold by the Levee Board to which title had been obtained in the manner provided for in the Act of 1890 and prior to its repeal in 1924. In the instant case, on the other hand, it is our contention that such a proper conveyance *was* made prior to the repeal of the grant to the Levee Board. Therefore, not only is the *Fitzpatrick* case not decisive of the case at bar; it is not even applicable, for no question was presented therein as to the sufficiency *vel non* of a transfer by the State to the Levee Board.

POINT 3.

Prescription Runs against the Rights of a Tax Debtor while the Title to the Property Adjudicated is in the State.

The Court of Appeals ruled (R. 119) that, until redemption, the tax debtor has no right or title in the property

as the absolute title is vested in the State; that prescription could not run against the State and that the tax debtor had no right which could be prescribed against while the title was in the State. In so holding the court erred, for the decisions of the Supreme Court of Louisiana are to the effect that the State does not acquire a perfect title by virtue of a tax adjudication, but merely an inchoate one. *Gamet's Estate v. Lindner*, 159 La. 658, 663, 106 So. 22; *Sitges v. St. Bernard Syndicate*, 169 La. 674, 678, 125 So. 850; *State ex rel. Tulane Homestead Ass'n v. Montgomery*, 185 La. 777, 778, 171 So. 28. Cf. *Charbonnet v. Forschler*, 138 La. 279, 70 So. 224. The same rule applies to all adjudicatees (as distinguished from the State or City) during the period of redemption. *Moore v. Boagni*, 111 La. 490, 35 So. 716. Accordingly, since the State has not acquired *all* of the title of the tax debtor, it follows that *some* of the title rights remain in the tax debtor. *Louisiana Civil Code, Article 3521*, provides that prescription "runs against *all persons*, unless they are included in some exception established by law". There is no exception expressly established by law in favor of a tax debtor. The title rights which he retains are distinct and different from the title acquired by the State and hence are not protected by the rule that prescription does not run against the State. Therefore, we submit, the title rights of the tax debtor, whatever they may be, will be lost when another acquires what would, in the absence of the tax adjudication, have been a good prescriptive title to the property. And in the instant case we do not believe that it can be disputed that, but for the tax adjudication, the defendants would have a good and valid prescriptive title to said property *as against the plaintiffs*

herein. As a matter of common justice, it is submitted that one who has neglected his property and slept on his rights for forty-three years should not be permitted to hide behind the skirts of the State when his neglect is brought home to him.

POINT 4.

The Prescription of Six Years applies to a Transfer by a Levee Board.

The District Court overruled defendants' plea of the prescription of six years provided by Louisiana Act 62 of 1912 upon the sole basis that said statute applies only to *patents* issued by a governmental agency, and that there was no "patent" at issue in this case. (R. 77.) This ruling was affirmed by the Court of Appeals without comment. (R. 114-122.)

Section 1 of Act 62 of 1912 provides:

> "Be it enacted by the General Assembly of the State of Louisiana, etc., That all suits or proceedings of the State of Louisiana, private corporations, partnerships or persons to vacate and annul any patent issued by the State of Louisiana, duly signed by the Governor of the State and the Register of the State Land Office, and of record in the State Land Office, or any transfer of property by any sub-division of the State, shall be brought only within six years of the issuance of patent, provided, that suits to annul patents previously issued shall be brought within six years from the passage of this Act."

It will be noted that said statute in express terms applies to "any *transfer* of property by any sub-division of the State" and is not limited to "any *patent*". It would seem that under the plain terms of the statute the prescription would apply to a transfer by a levee board, and that the failure of the Court of Appeals to uphold said plea was error.

POINT 5.

In the Alternative, the Court should hold this Matter under Advisement until a Final Determination by the State Court.

In view of the authorities hereinafter cited, it is believed that the Circuit Court of Appeals erred in failing to grant a rehearing after its attention was called to the pending state court suit involving the same issues. However, in the event that this Honorable Court should not be disposed to grant certiorari for this reason, or for any of the other above reasons, then defendants urge in the alternative, the following argument:

In the case of *"Wm. S. Lovell et als. v. Andrew Fitzpatrick, et als."*, No. 11,193 of the Docket of the 17th Judicial District Court for the Parish of Terrebonne, State of Louisiana, a judgment was rendered on April 8, 1941, (an excerpt of pertinent portions of said judgment being attached hereto as Exhibit A). The plaintiffs in this case were likewise the plaintiffs in that case and the land involved in that case was included in the same instrument executed by the Register of the State Land Office which

defendants in this case claim to have been a valid transfer of the title to the land from the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District. In that case the defendants made the contention, and the court held, that the said instrument was sufficient to operate as a transfer to the Levee Board. Accordingly, the decision of the state court, involving exactly the same factual situation, was directly contrary to the decision of the Circuit Court of Appeals in the instant case. The plaintiffs in said state court case have not as yet taken an appeal from said judgment.

If the plaintiffs do appeal from said judgment (and it is our understanding that such is their intention) then the very questions involved in the instant case will shortly have to be passed upon by the Supreme Court of Louisiana. And in view of the well known fact that affirmances greatly exceed reversals in number, it seems probable that the decision of the Supreme Court of Louisiana will be contrary to that of the Fifth Circuit. This Court has recently had occasion to state that "it is inadmissible that there should be one rule of state law for litigants in the state courts and another rule for litigants who bring the same question before the federal courts owing to the circumstance of diversity of citizenship". *Fidelity Union Trust Co. v. Field*, No. 32, decided December 9, 1940.

See also: *Erie R. Co. v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188.

On the other hand, if the plaintiffs decide to take no appeal from the judgment of the state court, and permit said judgment to become final, and this Honorable Court

does not grant to defendants the relief prayed for, a manifest injustice will have been done to defendants, for, through the accident of Federal jurisdiction, the defendants will have been divested of their title to the property in question, while if the action had been brought in the state courts defendants' title would have been vindicated. Furthermore, if no appeal is taken from said judgment *it will then be the only final pronouncement by a state court* on the question decided therein. In *West v. American Teleph. & Teleg. Co.*, Nos. 44 and 45, decided December 9, 1940, this court stated that the obvious purpose of Section 34 of the Judiciary Act (the "Rules of Decision" statute) was to prevent the existence of two divergent systems of law, one for the state courts and one for the federal courts, and that that object would be thwarted if the federal courts were permitted to make their own rules of decision when the highest court of the state had not spoken. Your Honors went on to say:

> "A state is not without law save as its highest court has declared it. There are many rules of decision commonly accepted and acted upon by the bar and inferior courts *which are nevertheless laws of the state* although the highest court of the state has never passed upon them. In those circumstances a federal court is not free to reject the state rule *merely because it has not received the sanction of the highest state court,* even though it thinks the rule is unsound in principle or that another is preferable. State law is to be applied in the federal as well as the state courts and it is the duty of the former in every case to ascertain from all the available data what the state law is and apply it rather than to prescribe a different rule, however superior it may appear from the viewpoint of 'general law' and however much it may have

> departed from prior decisions of the federal courts. See Erie R. Co. v. Tompkins, supra (304 U. S. 78, 82 L. ed. 1194, 58 S. Ct. 817, 114 ALR 1487); Russell v. Todd, supra (309 US 293, 84 L. ed. 762, 60 S. Ct. 527)." (Italics added.)

The case then held that a decision of an intermediate appellate court of a state is binding upon a federal court unless it is convinced that the highest court of the state would hold otherwise.

If the law of a state may be found in a decision of an intermediate court, it should also be found in a *final* decision of a lower court, if there are no indications that the court of last resort would decide otherwise; this result being almost *a priori* from the language of the *West* case above quoted. In addition, in the case of *Fidelity Union Trust Co. v. Field, supra,* this Court held that a decision of the Chancery Court of New Jersey was entitled to the same respect as a decision of the New Jersey Intermediate appellate court (Supreme Court of New Jersey) in so far as it announced state law. Your Honors seemed to stress the fact that, in that state, equity decrees are entered by the Chancellor whose decisions are subject to review, like those of the Supreme Court, by the Court of Errors and Appeals. Although the Louisiana judicial hierarchy is set up in a different manner, Your Honors' comparison in the *Field* case is remarkably *a propos* here. In Louisiana, the District Court (no distinction being made between law and equity) is the court of general trial jurisdiction *(La. Const. Art. VII, Sec. 33)* whose decrees are entered by a District Judge. In cases, such as the state court case now under discussion, involving more than Two Thousand Dollars (other than personal injury suits) the

decree of the district judge is reviewable only by the Supreme Court of Louisiana *(La. Const. Art. VII, Secs. 10, 29.)* In cases involving Two Thousand Dollars and less, or involving personal injuries, the judgments of the Courts of Appeal are also reviewable only by the Supreme Court *(La. Const. Art. VII, Sec. 11)*. Thus, in a case involving more than Two Thousand Dollars, the Louisiana district court's decree, like that of the New Jersey Chancery Court, is reviewable only by the highest court of the state, and would seem to be equally as effective as the decree of the New Jersey Chancery Court. The parallel is so striking that the *Field* case should be absolutely controlling here.

In a recent decision of this Court, in which the prior jurisprudence was fully discussed, it was held that a reviewing Federal court is bound to follow the state law even though that law only came into existence or expression after the decision of the Federal lower court. *Vandenbark v. Owens-Illinois Glass Company,* No. 141, decided January 6, 1941. And in two matters before this Court at this term, applications for certiorari were held under advisement for several months, after the Court's attention had been called to the fact that the identical question was pending in the state courts of Minnesota and after the Court had been requested to withhold decision until the determination of the issue in the state courts. Upon the decision of the question by the state courts, this Honorable Court then granted certiorari and reversed the ruling of the lower court *per curiam. The City Company of New York v. Stern,* No. 79, decided March 31, 1941; *Chase Securities Corporation v. Vogel,* No. 89, decided March 31, 1941.

It is submitted that, in the light of the above cases, this Court, in the event that it does not grant certiorari upon the grounds heretofore discussed, should hold this proceeding under advisement until such time as the Louisiana Supreme Court shall have passed upon the question, or the decision of the District Court shall have become unappealable, and should then act accordingly. Otherwise, in the light of the above discussion, a conflict between state and federal rulings would appear to be highly probable.

CONCLUSION.

The defendants believe that they have shown that error was committed by the Circuit Court of Appeals for the Fifth Circuit in rendering judgment against them on the question of title, and that the questions involved are of such importance as to warrant the issuance by this Court of a writ of certiorari. However, in the event that this Court should not see fit to issue said writ in due time, then defendants submit that, in order to prevent there being a conflict between the State and Federal jurisprudence, this Honorable Court should hold this matter under advisement until a final decision by the State court on the issues involved.

All of which is respectfully submitted.

ROBERTS C. MILLING,
Attorney for Cross-Petitioners.

HAYWOOD H. HILLYER, JR.,
Of Counsel.

APPENDIX.

EXHIBIT "A".

"17th Judicial District Court, Parish of Terrebonne, State of Louisiana.

William S. Lovell, et al.,
vs. **No. 11,193.**
Andrew Fitzpatrick, et al.

Action: Petitory.

Opinion & Judgment.

* * * * * *

"It is noteworthy that the Register of the Land Office does not recite that he *'hereby transfers* said lands'; his declaration is that the lands *'have been transferred* to the Atchafalaya Basin Levee Board—'.

"Since he was the officer charged with the function of making any formal transfer, his certificate is equivalent to the declaration that he had *already* (at a past date, or perhaps, of even date) accomplished and *performed* that function.

"And to *that declaration,* he appended the information that the transfer *had been made* under the provisions of Act 97 of 1890, thereby evidencing that he was fully aware of the duties imposed upon him by the terms of that Act, (the *very Act* relied upon by the Levee Board and its vendee and succeeding assignees, including the present defendants); and that he was equally aware that, by promulgating the certificate then being *subscribed to* by him, he was *then* as the duly designated and authorized *land custodian* of the State, declaring *over his official signature* and under the *official seal of his Office,* that the mandate and direction of Act No. 97 of 1890 regarding the ultimate disposition of 'tax-lands' not 'redeemed' by

the tax debtor, *had been consummated;* that his Office, the proper authority instituted for that purpose, had placed the Levee Board in possession. It amounted to a declaration by the State through its authorized agent and 'title keeper', that the Levee Board was the legal owner, as far as the State was concerned—consequently, that the title of the Board's assignees, if any, could be relied upon by the public as legally derived from the State by way of Act 97 of 1890.

"That Certificate was placed of record in the Parish of Terrebonne on Feb. 19th, 1921. It is a public document, solemnly attested by the Register of the Land Office, the designated conservator and keeper of the State's land titles. Its appearance on the conveyance records of the parish constituted notice by the State that it no longer claimed title to the lands, and that it was the author, through Act 97 of 1890, of the Levee Board's title thereto.

"Guided by that certificate, the public that took cognizance of it can scarcely be charged with moral bad faith if they accepted and acted upon its declarations and plain import. It, in effect, if indeed ratification was needed, ratified and acquiesced in the title claimed by the Levee Board and, by it, conveyed to Wisner and his succeeding assignees.

"Irrespective of whether such transfer had in fact been executed before that date, or whether the certificate of Feb., 1912, was the Register's first exercise of a mandatory ministerial function imposed upon him by Act 97 of 1890, it is certain that said certificate makes it clear that said ministerial function had been called into play and actually exercised, at least not later than Feb. 14, 1912, and (on that date) noted on the State land records by the State's authorized custodian of its land records and titles. At least from that date, the State was bound, and the general public was entitled to guide itself by the

presence of the certificate on the conveyance records of the Parish of Terrebonne.

* * * * * *

"However, as it affects the merits of the present case, it does not seem important whether the words used, ("have been transferred"), refer to a conveyance *already executed*, or whether they are used and to be understood as the equivalent of 'are *hereby* transferred'.

"If accorded the first meaning, then the certificate is a recognitive title specially setting forth the tenor of a previously executed title, the actual production of which, under the circumstances of the case, is not essential—because reference to the Act of 1890 automatically affords full information of the tenor and pertinent commitments of such primordial Act as could have been executed under its direction and authority.

* * * * * *

"If, on the other hand, it be considered that the language used was employed as the equivalent of 'are *hereby* transferred', then the certificate *itself* qualifies as the requisite 'conveyance' contemplated and directed by Act 97 of 1890—And, as such, perfected the title of the Levee Board.

* * * * * *

"In that situation, the conclusion is that from and after the recordation of said certificate of Feb., 1912, the present defendants have had and enjoyed a perfected title.

"The strength of plaintiffs' present claim depends solely upon the effectiveness of the redemption deed issued to them by the Register on Jan. 12th, 1938.

"As it affects the lands now in question, the redemption deed of 1938, may as well never have been written, for the reason that it purports to convey to the plaintiffs 'described lands' that were not under the control or supervision of the Register, and *had not been* since the issuance and recordation of the Register's certificate of Feb. 14, 1912—a period of 26 years.

* * * * * *

"Thus Done, Rendered, Read and Signed in open Court at Houma, La., on this 8th day of April, A. D. 1941.

(Signed) ROBT. B. BUTLER,
Judge, 17th Jud. Dist., La."

N. B. The above opinion is not quoted in full due to its considerable length.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1941.

No. 82

DULAC CYPRESS COMPANY, LTD., AND J. M. BURGUIERES COMPANY, LTD.,

Petitioners,

versus

WILLIAM S. LOVELL AND DOUGLAS GORDON LOVELL,

Respondents.

PETITION OF DULAC CYPRESS COMPANY, LTD., AND J. M. BURGUIERES COMPANY, LTD., PETITIONERS, FOR A REHEARING.

ROBERTS C. MILLING,
Attorney for Petitioners.

HAYWOOD H. HILLYER, JR.,
Of Counsel.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1941.

No. 82.

DULAC CYPRESS COMPANY, LTD., AND J. M. BURGUIERES COMPANY, LTD.,

Petitioners,

versus

WILLIAM S. LOVELL AND DOUGLAS GORDON LOVELL,

Respondents.

PETITION FOR REHEARING.

Come now Dulac Cypress Company, Ltd., and J. M. Burguieres Company, Ltd., who present this, their petition for a rehearing on their application for a writ of certiorari in the above entitled cause, and, in support thereof, respectfully show:

I.

(a) That in the case of *"Wm. S. Lovell, et als. v. Andrew Fitzpatrick, et als."*, No. 11,193 of the docket of the

17th Judicial District Court for the Parish of Terrebonne, State of Louisiana, the respondents herein brought an action similar to this action against certain defendants, and that said defendants, in defense of said action, set up the same instrument executed by the Register of the State Land Office (R. 29) which is relied upon by petitioners herein as constituting a valid conveyance by the State of Louisiana to petitioners' ancestor in title of the lands in dispute.

(b) That in an application for a rehearing (R. 127) addressed to the United States Circuit Court of Appeals for the Fifth Circuit, petitioners called the attenion of said Court to the pendency in the state court of suit No. 11,193, and requested that no final decree be rendered in this case until a final determination of the state court proceeding on the ground that the decision by the state court would be followed by the Federal courts; that the Circuit Court of Appeals refused the rehearing and its judgment became final. (R. 140.)

(c) That on April 8th, 1941, (see petitioners' brief, Appendix "A"), a decision was rendered in said case No. 11,193 decreeing the instrument executed by the Register of the State Land Office to be a valid and effective conveyance and rejecting the demands of the plaintiffs in that suit (respondents herein); that no suspensive appeal was taken in said action within the delay allowed by law, and therefore said judgment is now final and execution may be had thereon (Art. 575, Louisiana Code of Practice); that a devolutive appeal may be taken within one year from the rendition of the judg-

ment (Art. 593, Louisiana Code of Practice), but that such devolutive appeal will not suspend the execution of the judgment (Art. 578, Louisiana Code of Practice).

(d) That the decision in said case No. 11,193 squarely passes upon the validity and effect of the instrument signed by the Register of the State Land Office, at issue in this case, and if said decision is followed by this Court, of necessity it will require a reversal of the judgment of the Circuit Court of Appeals for the Fifth Circuit rendered herein.

(e) That, as discussed in petitioners' brief, pp. 27-28, the decision of the 17th Judicial District Court for the Parish of Terrebonne is entitled to the same weight and dignity as a decision of the Chancery Court of New Jersey; that the decisions of the Chancery Court of New Jersey have been held to be binding upon the Federal courts in matters on which the highest New Jersey appellate court has not spoken. *Fidelity Union Trust Co. v. Field,* 311 U. S. 169, 85 L. Ed. 109.

(f) That there is no decision either of the Louisiana Supreme Court or of the Louisiana Courts of Appeal which passes upon the precise question here involved, and therefore, **at the present time the decision in case No. 11,193 is the law of Louisiana** and will so remain until a higher state court decrees to the contrary.

(g) That, accordingly, the said decision of the 17th Judicial District Court is binding upon the Federal Courts, and certiorari should issue herein to correct the error of

the Circuit Court of Appeals for the Fifth Circuit in deciding this case contrary to the state law on the subject, *Fidelity Union Trust Co. v. Field, supra;* and see authorities cited in petitioners' brief, pp. 25-28.

II.

(a) That if no appeal is taken by respondents herein in the said suit No. 11,193, then, since a higher court will not have passed upon the subject, the decision in said case will remain the law of Louisiana upon this express point, and will be diametrically opposed to the decision of the Fifth Circuit in this case.

(b) That if an appeal is perfected from said judgment, it seems likely that the Supreme Court of Louisiana may affirm the judgment of the 17th Judicial District Court, with the result that the state law will be the exact antithesis of the federal law in regard to the construction and effect of the selfsame instrument.

(c) Therefore, in the event that the Court does not see fit to issue certiorari herein and reverse the decision of the Circuit Court of Appeals for the Fifth Circuit on the basis set forth in Article I, then, in order to avoid the possibility of a conflict between the state and federal decisions, the Court should grant the writ and remand the case with instructions that any decision herein should be postponed, pending the eventual result of the state court proceedings.

III.

In addition to the above reasons for granting a rehearing herein, and in order that the ends of justice may be served, petitioners respectfully show the Court as follows:

(a) That in the instant case petitioners have always contended that an actual conveyance of the lands in dispute had been executed by the State of Louisiana in favor of the Board of Commissioners of the Atchafalaya Basin Levee District (petitioners' ancestor in title) but that the deed of transfer had been lost or mislaid; that the District Court held that the original existence of this transfer had not been established; and that this ruling was affirmed by the Circuit Court of Appeals.

(b) That petitioners made extensive and diligent efforts to locate the deed which they contended had been executed but were unsuccessful.

(c) That on October 3rd, 1941, the Chief Deputy Clerk of Court of the Parish of Terrebonne discovered in the Court House at Houma, Louisiana, an original act of transfer by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District dated November 10th, 1896, and covering, among other lands, the lands here in question; the said act of transfer being copied in full and annexed hereto as Exhibit "A", and the circumstances of the discovery of said document being set forth in an affidavit by H. C. Wurzlow, Chief Deputy Clerk of Court, Parish of Terrebonne, dated October 10th, 1941, which is copied in full and annexed hereto as Exhibit "B".

(d) That said original act of transfer is the very act which petitioners always contended had been executed,

but which they had been unable to find; that same is determinative of the instant case, and, if introduced in evidence, would require a reversal of the judgment rendered herein by the Circuit Court of Appeals.

(e) That this new evidence is documentary in character, is material to the issues involved herein, and could not, with due diligence have been discovered before. (See *Intravia v. Dixie Homestead Ass'n,* 192 La. 1087, 190 So. 226.)

(f) That in order to prevent a manifest injustice arising because of this situation, this Honorable Court should grant certiorari and remand the case with instructions to permit the introduction of the newly discovered evidence. (See *Schneider v. Aetna Life Ins. Co.,* 30 La. Ann. 1198, 1200.)

For the foregoing reasons it is respectfully urged that a rehearing be granted herein, that a writ of certiorari issue, and that the decree of the United States Circuit Court of Appeals for the Fifth Circuit be reversed, all as prayed for in petitioners' original petition for certiorari.

In the alternative, and in the event that upon the issuance of the writ of certiorari, the decree of the Circuit Court of Appeals is not reversed, then it is respectfully urged that the writ of certiorari be granted and that this case be remanded with instructions to permit the introduction in evidence of the above mentioned newly discovered deed, and thereafter, to postpone any decision herein pending the final outcome of the case of *"Wm. S.*

Lovell, et als. v. Andrew Fitzpatrick, et als.", No. 11,193 of the docket of the 17th Judicial District Court for the Parish of Terrebonne.

Petitioners further pray for such other and further relief in the premises, both legal and equitable, as to this Honorable Court may seem meet and just.

ROBERTS C. MILLING,
Attorney for Petitioners.

HAYWOOD H. HILLYER, JR.,
Of Counsel.

CERTIFICATE OF COUNSEL.

I, ROBERTS C. MILLING, counsel for the above named petitioners, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

ROBERTS C. MILLING,
Attorney for Petitioners.

EXHIBIT "A".

List of lands situated in the Parish of Terrebonne.

Lelovesque, Est. of J. B. & als.

A certain lot of ground situated on the Bayou Terrebonne, in this Parish, at about fifteen miles above the town of Houma, bounded above by land of Theodule Stevens and below by land of Lamant Legime,

Sold for Taxes 1894. Total $4.62.

Labit, Dacis.

A certain tract of land situated on the Bayou Little Caillou in this Parish, at about twenty-two miles below the town of Houma containing 295 acres bounded above by Daspit & Daspit and Trahan and below by Joseph Lecompte.

Sold for Taxes 1894. Total $16.39.

Labit, Dacis.

A certain tract of land situated on the Bayou Little Caillou in this Parish at about twenty-two miles below the town of Houma and containing 32 acres, bounded above by land of C. W. Duplantis and below by land of the Estate of James Lirette.

Sold for Taxes 1894. Total $5.61.

Lovell, W. S.

1°—A certain tract of land being 23, 24, 25, 26, 27, 28, 29 & 30. 2°—Lots 2, 3, 4 of Section 69 and fractional Section 74 T 19 SR 17 E all containing fourteen hundred and three acres.

Sold for Taxes 1894. Total $63.33.

Lovell, W. S.

389 acres of land being the East ½ of E ½ of Section 73 and SE ¼ of SE ¼ of Section 77 and SW¼ of NE ¼ and S ½ of Section 76 T 10 SR 17 E.

Sold for Taxes 1894. Total $19.48.

Picou, Eusibe.

A certain tract of land situated on the Bayou Little Caillou in this Parish at about twenty miles below the town of Houma, containing sixty-one acres of land, bounded above by state lands, and below by land of Hypolite Chauvin.

Sold for Taxes 1893. Total $8.77.

Picou, Eusibe.

A certain tract of land situated on the Bayou Little Caillou in this Parish, at about twenty-seven miles below the town of Houma, containing sixty-one acres, bounded above by state lands and below by land of Hypolite Chauvin.

Sold for Taxes 1894. Total $4.47.

Picou, Eusibe.

A certain tract of land situated on the Bayou Little Caillou in this Parish at about twenty-two miles below the town of Houma, containing eighty-eight acres, bounded above by land of Trahan Brothers and below by Drazile Eshte, sold for Taxes 1893 & 1894. Total $12.91.

Watkins, Jr., G. W.

A certain tract of land situated on the Bayou du Large, in this Parish containing three hundred and sixty acres bounded above by land of the Estate of Bernard Mermande and below by Felix Theriot.

Sold for Taxes 1894. Total $16.48.

Viguerie, Adolphe.

600 acres of land being the rear part of Sections 22, 23, 24 and lot 1 of Sections 39, 40, 41, 42 T 20 SR 18 E.

Sold for Taxes 1894. Total $23.69.

The above and foregoing described lands situated in the Parish of Terrebonne having been acquired by the state at tax sale for the non-payment of taxes and not redeemed within the time prescribed by law hereby transferred to the Board of Commissioners of the Atchafalaya Basin Levee District as provided for in Act 97 of 1890.

Witness my Official signature and seal of Office, this the 10 Nov., A. D. 1896.

(Signed) W. W. HEARD,
Auditor.

(Seal)

EXHIBIT "B".

State of Louisiana,
Parish of Terrebonne.

Before me, the undersigned authority, this day personally came and appeared: HERBERT C. WURZLOW, to me personally known, a resident of and domiciled in the Parish of Terrebonne, Louisiana, and who, upon being by be first duly sworn, did depose and say: That he is presently Chief Deputy Clerk of Court and Ex-Officio Recorder in and for the Parish of Terrebonne, Louisiana, and has held such position continuously since the year 1924;

That on October 3rd, 1941, while examining a lot of old loose papers contained in card-board boxes which had been stored in the basement vault of the Clerk's Office after the completion of the New Courthouse in 1938, affiant proceeded to open a rolled package of papers labeled "Police Jury Meetings, etc.", and discovered two documents, one following the other, purporting to be original transfers by the State of Louisiana to the Board of Commissioners of the Atchafalaya Basin Levee District, dated November 10th, 1896 and September 28th, 1899, respectively, and purporting to have been signed by W. W. Heard, Auditor;

That said documents bore no filings or certificates of recordation other than a pencil memorandum "For recordation 4/21/03 C. A. Celestin", on the back of the one dated September 28th, 1899, and the Conveyance Records of the Parish of Terrebonne failing to disclose that they had ever been placed of record, affiant, realizing the importance of said documents, immediately gave voice to his discovery to Mr. Claude Ellender, an attorney at law of Houma, Louisiana, who was then present in the office, and

who suggested that affiant file and record said documents in the Conveyance Records of Terrebonne Parish;

That shortly thereafter affiant received a long-distance telephone call from the office of Milling, Godchaux, Saal & Milling, Attorneys at Law, of New Orleans, Louisiana, and was requested by Mr. Roberts C. Milling, of said firm, as attorney for The Louisiana Land & Exploration Company, to file and place said documents of record;

That acting on such instructions, affiant filed said documents for record on said October 3rd, 1941 at 4:10 o'clock p. m., under File Numbers 48043 and 48044, respectively.

H. C. WURZLOW.

Sworn to and subscribed before me at Houma, Parish of Terrebonne, Louisiana, this 10th day of October, A. D. 1941.

R. W. BAZET,

(Seal) Clerk of Court and Ex-Officio Notary Public.